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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/322,875	05/28/99	CHUNTHARAPAI	A 11669.19US03

DIANE L MARSCHANG
1 DNA WAY
SOUTH SAN FRANCISCO CA 94080-4990

HM22/0829

EXAMINER	
VANDER VEGT, F	
ART UNIT	PAPER NUMBER
1644	10

DATE MAILED: 08/29/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/322,875

Applicant(s)
Chuntharapai et al

Examiner
F. Pierre VanderVegt

Group Art Unit
1644



- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire one month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claim

- ☒ Claim(s) 1-32 ~~is~~ are pending in the application.
- Of the above, claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☐ Claim(s) _____ is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☒ Claims 1-32 are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
- ☐ received.
- ☐ received in Application No. (Series Code/Serial Number) _____.
- ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

- ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- ☐ Notice of References Cited, PTO-892
- ☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____
- ☐ Interview Summary, PTO-413
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

DETAILED ACTION

This application is a continuation-in-part of application serial number 09/237,299, which claims priority to provisional application 60/072,481.

Claims 1-32 is are currently pending in this application.

Election/Restriction

Please Note: In an effort to enhance communication with our customers and reduce processing time, Group 1640 is running a Fax Response Pilot for Written Restriction Requirements. A dedicated Fax machine is in place to receive your responses. The Fax number is 703-305-3704. A Fax cover sheet is attached to this Office Action for your convenience. We encourage your participation in this Pilot program. If you have any questions or suggestions please contact Paula Hutzell, Supervisory Patent Examiner at Paula.Hutzell@uspto.gov or 703-308-4310. Thank you in advance for allowing us to enhance our customer service. Please limit the use of this dedicated Fax number to responses to Written Restrictions.

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 1-21 and 23-24, drawn to anti-DR4 antibodies and compositions comprising same, hybridomas producing anti-DR4 antibodies, classified in class 530, subclass 388.7 and class 435, subclass 343 respectively.
- II. Claim 22, drawn to a method for inducing apoptosis using anti-DR4 antibodies, classified in class 424, subclass 152.1 (*in vivo* embodiment), and class 435, subclass 375(*in vitro* embodiment).
- III. Claim 25-26, drawn to a bispecific antibody comprising an anti-DR4 antibody, classified in class 530, subclass 387.3.
- IV. Claim 27-32, drawn to a method of treating cancer using an anti-DR4 antibody, classified in class 424, subclass 156.1.

2. The inventions are distinct, each from the other because of the following reasons:

Inventions I, III and II, IV are related as products and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP

§ 806.05(h)). In the instant case the anti-DR4 antibodies of Groups I and III can be used to identify DR4⁺ cells from a mixture of cells and the bispecific antibodies of Group III can additionally be used to bind DR4⁺ cells to an antigen useful for cell purification.

5 Inventions I and III are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions the dimeric molecule of Group III is a bispecific antibody comprising another immunoglobulin which binds to an unrelated antigen. Therefore the claimed dimeric molecule has different binding characteristics, amino acid composition and physicochemical properties than
10 the anti-DR4 antibodies of Group I.

15 Inventions II and IV are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case the different inventions are drawn to different methods. The method of Group II is a method of inducing cells to 'commit suicide' in vitro or in vivo. The method of Group IV is an in vivo method of attacking
20 cancer cells and destroying them via the direct action of the antibody or the moiety attached to the antibody.

25 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

 4. A telephone call was made to Diane Marschang on August 23, 2000 to request an oral election to the above restriction requirement, but did not result in an election being made. There
25 was no response to a voice-mail message.

 5. Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37
CFR 1.143).


6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Conclusion

7. Papers related to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. Papers should be faxed to Group 1640 via the PTO Fax Center located in Crystal Mall 1. The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The fax phone number for official documents to be entered into the record for Art Unit 1644 is (703)305-3014.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to F. Pierre VanderVegt, whose telephone number is (703)305-6997. The Examiner can normally be reached Tuesday through Friday and odd-numbered Mondays (on year 2000 366-day calender) from 6:30 am to 4:00 pm ET. A message may be left on the Examiner's voice mail service. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Ms. Christina Chan can be reached at (703)308-3973. Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center 1600 receptionist, whose telephone number is (703)308-0196.

F. Pierre VanderVegt, Ph.D.
Patent Examiner
Technology Center 1600
August 28, 2000


F. PIERRE VANDERVEGT
PATENT EXAMINER